

PATENT

A circular stamp from the Office of Intellectual Property (OIP). The text "OIP" is at the top, "IAP35" is on the right, "JUL 03 2006" is in the center, and "PATENT & TRADE MARK OFFICE" is at the bottom.

AFFIDAVIT OF CARL E. MOORE UNDER 37 C.F.R. §1.132

Mail Stop AM
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

I, Carl E. Moore, Jr., hereby swear as follows:

1. I am a manager of VPS, LLC, which is the owner of United States Patent Application No. 09/731,359, entitled METHOD AND APPARATUS FOR ROUTING AND DISTRIBUTING DIGITAL IMAGES.

2. I have reviewed the Office Action mailed on December 28, 2005, and the prior art references on which the rejections under 35 U.S.C. §103(a) are based.

3. The purpose of this Affidavit is to submit evidence of secondary considerations of non-obviousness, including licenses taken and commercial success, in order to rebut the obviousness rejections in the Office Action mailed December 28, 2005.

4. As of the date of this Declaration, VPS, LLC has already received in the aggregate in excess of ten million dollars (\$10,000,000) in royalty payments from several licensees under the Jebens et al. patents (U.S. 6,321,231 and U.S. 6,332,146) and the pending Jebens et al. patent application, which is a continuation of the issued Jebbens et al. patents. There are several licensees, and more than one of these licensees are Fortune 100 companies.

5. According to Info Trends, Inc., Online Photo Services Market Forecast: 2005-2010 (February 13, 2006), the licensees represented in excess of an estimated 84% of the online photo services market in 2004. Info Trends, Inc. projected that the share for these licensees was expected to increase for 2005 to the point that the licensees will likely represent in excess of 88% of the online photo services market. VPS, LLC continues its licensing program and is in direct negotiations with other companies that are in the online photo services market. Info Trends, Inc. estimates that the total worldwide online photofinishing revenues for 2004 were over \$450 million, and are expected to surpass \$1.2 billion in 2010.

6. The Fortune 100 licensees are sophisticated companies and have substantial expertise in the technical, legal, and business areas of the online photo services market. In addition, these companies have substantial patent portfolios of their own.

7. The licenses taken by licensees of the inventions cover the manufacture and sale of a system built in accordance with the present application, and the performance of a method performed in accordance with the present application.

8. It is my observation that the success of the invention lies in the claimed features of the current disclosure, including the combined elements of the digital image management system. Specifically, it is the fact that the Jebens et al. patents

and the claims of the present patent application are directed to *inter alia*: a sharing system, wherein an image provider may identify an authorized user in addition to the image provider capable of accessing digital images supplied by the image provider, and this sharing feature is promoted by our licensees.

9. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements are made with knowledge that willful false statements and the like so made are punishable by fine, or imprisonment, or both under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

June 28, 2006
Date

CE Moore
Carl E. Moore
Manager, VPS, LLC